EXHIBIT G

DIVISION THREE

MC-275

Name La Merle R. Johnson
Address P.O. 409060
(C15-208L)
Ione, CA 95640-9060
CDC or ID Number J-92682

ORIGINAL

FIRST APPELLATE DISTRICT COURT
STATE OF CALIFORNIA
(Court)

A115885

LA MERLE RONNIE JOHNSON
Petitioner
vs.
ROSANNE CAMPBELL, Warden (A)
Respondent

PETITION FOR WRIT OF HABEAS CORPUS

No.

FILED
(To be supplied by the Clerk of the Court)
NOV 20 2006
Court of Appeal - First App. Dist.
DIANA HERBERT
By DEPUTY

INSTRUCTIONS—READ CAREFULLY

- **If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.**
- **If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.**
- Read the entire form *before* answering any questions.

A111887 (3)

- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the Superior Court, you need file only the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal, file the original and four copies of the petition and, if separately bound, one copy of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and ten copies of the petition and, if separately bound, two copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.
- In most cases, the law requires service of a copy of the petition on the district attorney, city attorney, or city prosecutor. See Penal Code section 1475 and Government Code section 72193. You may serve the copy by mail.

Approved by the Judicial Council of California for use under Rule 60 of the California Rules of Court [as amended effective January 1, 2005]. Subsequent amendments to Rule 60 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

This petition concerns:

- ☐ A conviction
- ☒ Parole
- ☐ A sentence
- ☐ Credits
- ☐ Jail or prison conditions
- ☐ Prison discipline
- ☐ Other *(specify)*: _____

1. Your name: La Merle R. Johnson
2. Where are you incarcerated? Mule Creek State Prison
3. Why are you in custody? ☒ Criminal Conviction ☐ Civil Commitment

Answer subdivisions a. through i. to the best of your ability.

a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").

kidnap/ransom

b. Penal or other code sections: 209(a)

c. Name and location of sentencing or committing court: San Mateo County Superior Court

d. Case number: SC 31800

e. Date convicted or committed: January 2006

f. Date sentenced: ''

g. Length of sentence: Life+11 years

h. When do you expect to be released? When the Court releases me

i. Were you represented by counsel in the trial court? ☒ Yes. ☐ No. If yes, state the attorney's name and address:

Edward Pomeroy

4. What was the LAST plea you entered? *(check one)*

☒ Not guilty ☐ Guilty ☐ Nolo Contendere ☐ Other: _____

5. If you pleaded not guilty, what kind of trial did you have?

☒ Jury ☐ Judge without a jury ☐ Submitted on transcript ☐ Awaiting trial

6. GROUNDS FOR RELIEF

Ground 1: State briefly the ground on which you base your claim for relief. For example, "the trial court imposed an illegal enhancement." *(if you have additional grounds for relief, use a separate page for each ground. State ground 2 on page four. For additional grounds, make copies of page four and number the additional grounds in order.)*

'See Attached'

a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts upon which your conviction is based. *If necessary, attach additional pages.* CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is: *who* did exactly *what* to violate your rights at what time *(when)* or place *(where). (If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)*

'See Attached'

b. Supporting cases, rules, or other authority (optional):

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

ORIGINAL WRIT FILED IN SAN MATEO COUNTY SUPERIOR COURT

FOLLOWS IS SUPERIOR COURT DENIAL
&
PETITIONER'S RESPONSE TO SUPERIOR COURT DENIAL

La Merle R. Johnson, J-92682
P.O. 409060 (C15-208L)
Ione, CA 95640-9060
www.realisticreform.com

IN THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

LA MERLE R. JOHNSON,
Petitioner,
vs.
ROSANNE CAMPBELL,
Respondent.

Case # _____

WRIT OF HABEAS CORPUS DUE TO DENIAL OF PAROLE ELIGIBILITY

FACTS

Petitioner is serving a Life+11 year sentence for the kidnap/ransom of Ellis Foots. On March 22, 2006, Petitioner had his initial (first) parole-eligibility hearing, he was denied parole for 2-years. Prior to having the initial hearing, Petitioner was informed by Board Member and other State-Workers, that he would be denied parole, (See Exh. A, # 1); he filed a habeas corpus in San Mateo County Superior Court advising them of such, petition denied. (Exh. B.)

After advising Petitioner that parole was denied, the Board told him, "This was the factors that we used, first of all the offense was carried out in a specially cruel and callous manner." (Exh. C., pg. 77, ln. 16-18)

Claim I

STATUTE ALLOWING BOARD TO DENY PAROLE BASED ON FACTS THAT CAN NEVER BE CHANGED IS UNCONSTITUTIONAL, U.S.C.A 5 & 14

California Penal Code, (henceforth PC) 3041(b), enables the Board to base denials on unalterable facts;

> "The Panel or board **SHALL** set a release date unless it determines that the gravity of the current convicted offense or past convicted offenses, is such that consideration of the public safety requires a more lengthy period of incarceration for this individual, and that a parole date therefore, cannot be fixed at this meeting."

Biggs v. Terhune 2003 DJDAR 7245, stated that a life prisoner does have a liberty-interest in a parole hearing, also stated, "A continued reliance in the future on an unchanging factor, the circumstances of the offense and conduct prior to imprisonment, runs contrary to the rehabilitative goals espoused by the prison system and could result in a due process violation."

Petitioner dis-agrees with Biggs (supra) in part, asserting that any reliance on unchangeable factors is a due process violation, which would make the statute (PC 3041. (b)) allowing for such unconstitutional.

Life with the possibility of parole means just that, life with the possibility of getting out one day. When the person is given the sentence, the sentencing Court is already aware of the persons past, which may play heavily into giving them the sentence. The sentence comes with a statutory timeline regarding how much time the person **SHALL** serve before parole can be considered.

Once the person becomes eligible they are then sent before the parole-board, to consider whether or not the person can safely return to society. Now at this point, it is a fact that the person has done something horrible warrenting their need to see a parole-board, but the Boards job is not

to re-sentence the person, (U.S.C.A. 5), for crimes the Court has already sentenced them for, but instead to assess whether or not, today, that day, the person is not a threat to society.

With that in mind, the Board's job being to assess whether or not the person is a current danger, the only factors that can illuminate the potential or non-potential threat level is in-prison behavior, facts occurring after the sentencing and which are things the prisoner can actually do.

So, the logical question is this, if the only behavior which the Board can use to justify release, is post-crime (in-custody) behavior, how is it constitutional if the statute allows them to deny parole based on things not controllable by anybody, the altering of the past?

> PC 3041.5 (2) & CCR Title 15, §2268(c)
>
> When denying parole, it is statutorily mandated that the Board;
>
> 'Board **SHALL** advise prisoner of reasoning for denial, and, (Penal Code), "suggest activities in which he or she might participate that will benefit him or her while he or she is incarcerated." '

It seems the statutes are in conflict, on the one hand PC 3041 (b) allows for the Board to deny parole based on unchangeable facts, but PC 3041.5 (2), instructs the Board to advise the person on what activities to involve themselves in to be considered for parole, the only logical-reasoning for the purpose to be before the Board. The Board, when denying parole based on crime factors, (PC 3041(b)), could not possibly reasonably fulfill their statutory obligation per PC 3041.5 (2), because no-thing the Board can recommend or

suggest will alter the past, therin lies the conflict.

When the Board is enabled to deny parole based on facts that can not be changed, they automatically fail to adhere to their statutory obligation of suggesting activities for the prisoner to engage in which could make them paroleable, because nothing can change the past.

Also, the Board's own actions further highlight the constitutional-problems beforementioned. Statistically the Board denies parole 99+% of the time at initial hearings, and 98+% at subsequent hearings, (See Exh. A., # 2, & Exh. D, Public Information Request). In all of those hearings where parole is denied, the crime is used as a factor. When at some future date in a subsequent hearing, parole is granted, what factors could the Board possibly utilize to justify release after having previously utilized the unchangeable crime factors as reasoning for denial?,..... the justification warrenting release can only come through positive in-prison behavior, accomplishments. And that is true in the rare instances where parole is granted at the initial-hearing, in-prison positive behavior is used to justify the granting of parole.

Constitutionally (Due Process) speaking, if the only reason the Board can justify lifer-release is positive in-prison behavior, then how can it ever be fair, in respect of the liberty interest that a prisoner has at a parole-hearing, for the Board to be able to utilize factors that can not be changed. **Note:** (The Board has never rationalized to the general-public and or the reviwing Full-Board and

Governor that they are recommending release of a life-prisoner, just-because, and not putting on the record the gains and other reasoning justifying their decision, gains being from in-prison behavior.)

As this relates to Petitioner, his Constitutional Rights have been violated when his crime factors were/are utilized to deny him parole; in that he is being re-sentenced by the Board, twice being put in jeapordy for the same offense, **U.S.C.A. 5 & 14;** his liberty interest of the parole-hearing is violated when unalterable facts are used to deny parole at any stage, **U.S.C.A. 14;** and the statute itself is made by the writers unconstitutional, because when past crimes are used to deny parole per PC 3041(b), then the Board is unable to fulfill its statutory obligation of PC 3041.5 (2) because nothing they can suggest the prisoner to do to make them eligible, can alter/change the past, **U.S.C.A. 5 & 14.**

Claim II

Prior to ever going before the Board, Petitioner was told by several reliable sources, (Exh. A., #1), that he would not be receiving a parole date at his initial hearing; not for anything he did or failed to do, but simply because despite the statutory language, "The Panel or board **SHALL** set a release date...", (PC 3041(b)), the Boards known un-spoken/underground policy was that inmates did not receive parole-grants at their initial hearings.

This un-spoken/underground policy which clearly conflicts with the mandatory language of the statute, is clearly in effect when looked at in connection with the statistical

data regarding parole-grants at initial board-hearings; 99+% of those going to their initial hearings are denied parole. (Exh. (See Exh. A. # 2, & Exh. D.)

PC 3041(b) contains mandatory language, "The Panel or board **SHALL** set a release date...", going on to outline the criteria excusing the ignoring of the mandatory language. As Petitioner pointed out in Claim I, the criteria (crime & other pre-prison acts) giving cause to ignore the mandatory language is in his opinion, unconstitutional.

But regardless of whether or not it (PC 3041(b) is unconstitutional as described in Claim I, what is clear is that the Board has en-acted and en-forced an underground policy that conflicts with the Statute.

This is easily proven by the consideration of one-question;

> In light of the fact, that every lifer-case has its own unique factors, how probable, logical, is it, that 99+% of the time, the criteria set out which excuses the Board to ignore the mandatory language of setting a date, is warrented?

The setting of the date, in fact based on the statutes mandatory language, should be the norm, not the exception, but in the instances of the California Panel/Board practices of its parole procedure, it is the norm not to set the date, to ignore the mandatory language, and it is not even the exception to set the date when minus 1% is found suitable at initial hearings.

CCR. Title 15, (Board of Prison Terms), §2250, states that a prisoner is entitled to an Impartial Hearing Panel,

a fair and impartial hearing, yet how is that possible when the panel is en-forcing an illegal-policy?

Petitioner's parole-eligibility was pre-determined prior to him ever entering the Board-Room, this is reasonably stated when considering that he was told by reliable sources, (A Board Member, two of his previous Counselors, one of which wrote his Board-Report, and other's.), prior to the hearing that he would not be receiving a date. (See Exh. A. #1); he advised the Superior Court of County of committement of this months in advance of the hearing through a writ of habeas, which was denied, (Exh. B.);

But most important in the illumination of this issue, is the undeniable statistical-data that clearly shows that an underground/unwritten/un-spoken policy is in play which mandates that a parole date not be set, ignoring the statutory language which mandates that the date is set; 99+% of differing case-factors prisoners are denied parole.

Petitioner's right to a fair and impartial hearing, his liberty interest of due process (U.S.C.A. 5 & 14) innate in a parole-eligibility hearing, can not possibly, reasonably, be adhered to when years prior to the hearing the outcome is conveyed to Petitioner; **AND**, when he's forced to have a hearing under conditions/policies that he can not defend against because there blatently illegal and not written down for constitutional review by the Courts.

Claim III

FACTS: While incarcerated in the San Mateo County Jail awaiting trial on his own case, Petitioner thwarted a murder-

plot being hatched by detainees attempting to manipulate the outcome of their individual trial-process. As a result Petitioner eventually became a witness for the San Mateo County District Attorney's Office, against Frank Porterfield and Bernard Knight in exchange for a plea-agreement of 17 years, 8 months, with half-time credits, which would have released him from prison in 2001.

During the stage of being a witness for the prosecution, the San Mateo County Sheriff's Department purposefully and continuously placed Petitioner's life in danger.

While Petitioner slept in his cell, Sheriff Personnel placed Bernard Knight in the cell with him, this after he had testified against Knight in open Court at a preliminary hearing. (See Exh. E., Rt. 1564-65)

Eventually a Court-Order was issued, ordering that Petitioner be housed in a different County Jail, though stating in the order that it was due to Petitioner's fears. (See Exh. F.)

Bernard Knight and Frank Porterfield's trials were severed, Porterfield going to trial first. Petitioner testified against Porterfield. After the truth-full testimony, Petitioner was beat up and threatened by Sheriff-Personnel of San Mateo County, some of the comments made to him were;

- You're going to be set up and killed for cooperating with the D.A.'s (San Mateo County) office. (Exh. E., Rt. 1589, 1618)

- Your enemies will be placed with you. Rt. 1588

- You're a snitch, watch out for Pelican Bay. Rt. 1586-87 & Exh. G, pg. 21-22

- We're going to make sure that your snitch jacket follows (To-Prison) you. Rt. 1589

- That the D.A. was lying to him (About being able to protect him in prison). Rt. 1645

- That there is a cop-side and an inmate-side, and that he (Petitioner) had better choose one. Rt. 1622-23, & 1633

- Petitioner was hog-tied and naked when most of the threats were made. Rt. 1586-87

Note: All Rt. cites are to documents contained in Exhibit E.

After threats were made, Petitioner in reasonable fear of threats being delivered, recanted his testimony. In investigating recantation, it was confirmed by Inspector Bill Cody of the San Mateo Sheriff's Department that the incident and threat(s) did take place. (Exh. G. pg. 16, 21-22)

In spite of the threats, and reasonable fear, Petitioner eventually recanted the recantation, citing fear, in an exchange he had with defense counsel of Porterfield after recanting recantation, here is what he said;

> "I don't know what happens in jails or penitentiary. I know I'm safer in San Francisco. Yeah. That's true. I'm not bothered. I'm not harassed.
>
> Sergeant Dowdy (One of those delivering threats) told me that they were going to send a package with me regardless. (Package; documentation telling prison that Petitioner was a snitch, inference to him that he would be killed because of it.)
>
> The only reason I called Dirickson (Investigator Petitioner had revealed murder-plot too, whom when recanting out of fear he blamed his testimony on Dirickson, stating Dirickson had fed him the murder-plot story, and whom he called in this instance to recant recantation and ask for FBI intervention because he did not know who

> to trust) was because I don't, when I walked out of here last week, (After testifying truthfully, no recantations),
>
> I felt good about myself. I felt that I had done something right. (After testifying about a murderer who had confessed to him, and was plotting more murders to influence his case, which Petitioner tried to sway him to abandon the plot, and only called Authorities when it became clear that the plot was going forward when weapons were obtained; upon Petitioner's information the weapons were confiscated and the plot was foiled.)
>
> The **only** reason I changed it (recanted original testimony) was because **I'm scared**.
>
> **And I'm still scared**. (Rt. 1649)

Petitioner later revealed that detainee Stephon Williams had also threatened him on the night that Sheriff-Personnel beat and threatened him. (Rt. 1663)

At the end of Petitioner's testimony, defense counsel motioned to have Petitioner's and another witness' testimony stricken due to perjury, then Deputy District Attorney (DDA) Charles Smith stated;

> "And, that it should be stricken as being completely unreliable regarding Lamerle Johnson. Your Honor you heard his testimony: The first version, the second and the third.
>
> And what is **CLEAR** is that the system **FAILED** him ultimately, because I'm responsible for any witness' safety ultimately.
>
> And, the **FAULT is MINE; NOT HIS**." Rt. 1676, Ln. 19-25

The case went to the jury, with DDA Smith using Petitoner's testimony in his attempt to convict Porterfield. Petitioner was told that if Porterfield trial won, that he would get his plea, but that if it was lost, that Chief

Deputy Prosecutor Steve Wagstaff had stated that he was going to fry Petitioner's ass. (Exh. H, #11).

Important Note: Steve Wagstaff was the Chief Deputy under District Attorney Jim Fox, both men are still today in those same positions.

Porterfield trial lost, San Mateo County District Attorneys Office filed a motion to rescind Petitioner's plea-agreement. Court then appointed Edward Pomeroy to represent Petitioner, who without the record of DDA accepting responsibility for Petitioner's actions, advised Petitioner to not oppose the Prosecutions' motion to rescind. After the motion was granted, Petitioner learned that Pomeroy was the ex-attorney for Bernard Knight, the defendant whom he had testified against and awoke to find being placed in his cell by Sheriff-Personnel. And that if Pomeroy had succeeded in salvaging Petitoner's plea, which would have called for him to still testify against Knight; that Pomeroy would have been testifying on behalf of Knights's defense in the same murder trial Petitioner was scheduled to testify against Knight.

Pomeroy avoided the conflict with Knight, by advising Petitioner to not fight for his plea, thus creating a conflict with Petitioner. (Exh. H., #8-10, &12; Court was aware of the conflict, #10, **never** acted on it.)

Despite Pomeroy acting in accordance with the conflict and not in the best interest of his client at the rescission hearing, some interesting exchanges were had in the Court room as it related to Petitioner's safety in the San Mateo County Jail, brought up by the DDA motioning for rescinsion.

Discussion After Rescinsion-Motion Granted

DDA: "There is an order for housing Mr. Johnson in San Francisco and the conditions underlying that order have not changed. We ask he remain--however, I will do an order of return, given the problems we had in this matter."

Court: "Mr. Pomeroy, you are aware of that order?"

Pomeroy: "Yes."

Court: "In fairness to Mr. Johnson, I think he should be housed in San Francisco, but if that's going to impinge upon your preparation for trial and so forth, that issue will have to be addressed at some point."

Pomeroy: "No, your Honor. It will just give me an opportunity to go to San Francisco and sample some better restaraunts."

DDA: "Just for the record, this was Mr. Pomeroy's request when we discussed it off the record."

Court: "I **understand** the reasons for it. In **fairness** to Mr. Johnson, I think it's **CRITICAL** to **order** that he be housed in San Francisco." (Exh. I, pg. 7)

In an earlier exchange between the Porterfield Court prior to Petitioner's recantation on the record, the same Court who issued the protective-housing order citing that Petitioner believed his life was in danger if he stayed in the San Mateo County Jail;

Counsel: "He (Petitioner) also requested me to ask the Court that he be immediately transferred back to San Francisco after his testimony.

Based on **police problems** he had in the jail when he was here testifying last week. And, **again**, part of the **errors** that occurred this afternoon, in having him placed (By San Mateo County Sheriff-Personnel) in the same cell with the defendant (Frank Porterfield) just a few moments ago.

Court: I'm not going to make any specific orders to the Sheriff's Office regarding transportation. I don't know if we will even be through with his testimony this afternoon.

> But, I certainly will **express** the **HOPE**, and will ask the bailiff in this department to convey to the transportation officials that, obviously, Mr. Johnson is an in custody witness in a criminal case.
>
> And that he **ought** to be both housed and transported accordingly. (Rt. 1505)

Petitioner's case was taken to trial, prosecuted by then DDA Stephen Hall, he predictably lost and was sentenced to Life+11 years in prison. After the conviction, per the Penal Code 1203.01, 'Statement of Views', Stephen Hall in representation of the San Mateo County District Attorney's Office, recommended that I never be released from prison, and in that statement failed to advise the prison of any danger to Petitioner's life.

Important NOTE: Stephen Hall is now the Presiding Judge of San Mateo County.

Upon arriving in prison, every threat made to Petitioner by San mateo County Sheriff Personnel came true, he was placed with his enemies and eventually slashed/stabbed by Stephon Williams, the same Williams who threatened Petitioner on the night that Sheriff Personnel did, (Rt. 1663), and the same Williams who was known by Prison-Personnel as being Petitioner's enemy. (Exh. H., #13)

No charges were ever brought against any Sheriff-Personnel or inmates in regards to the threats and assaults Petitioner suffered. State Attorney General's Office was made aware of all of the above-mentioned, and provided with the documentation (And more) accompanying this writ as exhibits, as of today, no action was taken by the Chief Law Officer of the State.

On March 22, 2006, at Petitioner's Board Hearing, San Mateo County, through Deputy District Attorney Sean Gallagher, opposed Petitioner's request for parole.

Argument

CCR Title 15, (supra), §2030, 'Prosecutor Participation', §2030(3), "..if the district attorney cannot appear because of a conflict."

It should go without saying that to have a fair and impartial parole hearing, the prosecutions' office opposing or requesting parole should be unbiased.

In this instance, an instance where San Mateo County Sheriff Personnnel continously set Petitioner up to be killed in relation to him cooperating with the District Attorney's Office, DDA admitted the system (San Mateo County) had failed Petitioenr, (Rt. 1676), and the Chief Deputy Prosecutor threatened to fry Petitioner's ass if he lost a case, (Exh. G., #11), that just maybe San Mateo County should not be allowed to make a recommendation regarding Petioner's Parole-Eligibility.

Not to mention the fact that the key-players mentioned throughout the before facts, Steve Wagstaff, James/Jim Fox, and Stephen Hall, (San Mateo Counties, Chief Deputy Prosecutor, Elected District Attorney, and Presiding Judge, top three law-officers of County), are still in place today.

Petitioner can not possibly receive a fair or impartial parole-hearing with San Mateo County being allowed to make a recommendation, **U.S.C.A. 5 & 14**; Petitioner and his

counsel at the Board hearing made this objection. (Exh. C., pg. 11-12)

The County of San Mateo, Judges, D.A.'s, and Defnese Counselors, knew that Petitioner's life was in danger by San Mateo County Sheriff Personnel, that danger followed him to prison as the threat stated it would, yet not one sworn Fiduciary Officer of the Court advised Prison-Personnel of the reasonably-predictable danger to Petitioener's life; no one stood up to protect Petitioner's plea, despite the fact that everyone knew police-duress had caused it to be in jeopardy, and despite the fact that the San Mateo County District Attorney's Office was okay while knowing the same facts it knows now, with Petitioner going home in 2001 if they won the Porterfield/Knight case, that same office now recommends that Petitioner in essence never be released from prison, die in prison, because as their DDA Smith put it;

> "...What is clear is that the system **failed** him ultimately.
>
> And, the **fault** is mine (San Mateo County); not his."

Constitutionally, it would be a slap in the face of justice, to not order that San Mateo County never again take any role in the current instance surrounding Petitioner's incarceration.

Another un-known factor of how this effected Petitioner's parole hearing is this; off the record, the Presiding Commissioner Archie "Joe" Biggers, asked San Mateo County Deputy District Attorney Sean Gallagher about the plea-

agreement. (See Exh. A., # 3) Defense counsel conveyed this to Petitioner during the intermission/deliberation, stating that Commissioner Biggers asked DDA Gallagher this after he left the room and before deliberations began; counsel did not hear exactly how DDA Gallagher responded.

Petitioner can not state with any degree of certainty how DDA Gallagher responded to the Commissioner's question, but he can reasonably state that he did not go into the detail outlined in the facts of this writ.

And whatever DDA Gallagher said in response, it did not stop the Commissioner from stating;

> "We also noted that the District Attorney from San Mateo County in accordance with 3042 notices communicated opposition to a finding of parole suitability." (Exh. C., pg. 81, Ln. 13-17)

So, in this instance, a District Attorney's Office with a clear conflict of interest recommendation to oppose parole-suitability was cited in the reasoning justifying denial. An office, which for arbitrary and capricious reasons are requesting denial of parole; (Wagstaffe sought maximum sentence for revenge purposes, not out of justice, Exh. H., # 11). In speaking on what a miscarriage of justice can entail in, Sawyer v. Whitley 505 U.S. 333, 112 S.Ct 2514, stated;

> "The accusatorial system of justice adopted by the Founders affords a defendant certain process-based protections that do not have accuracy of truth finding as their primary goal. These protections--including,...the Eighth Amendment right against the imposition of an arbitrary and capricious sentence." at 2528

Now, parole-board case-precedent has given the Board wide-discretion, yet that does not trump the fundamental-rights protecting prisoner's at the hearings.

In this matter the District Attorney had a clear conflict which the Board ignored, and an opinion/request for parole-denial which the Board utilized in its explaination of denial.

When oppossing parole, the San Mateo County District Attorney's Office continued to perpetrate the system's failing Petitioner, (Rt. 1676), it continued to impose a cruel and unusual punishment-sentence, which was sought out of revenge (arbitrary and capricious reasoning) and is now utilizing the Board of Parole Hearings to seek a slow-death sentence where the actual death-threats-attempts on Petitioner's life actually failed. (Exh. H., #13, Exh. G., pg. 16, 21-22, and all threats outlined in Rt's.)

Constitutional Violations, U.S.C.A. 5, 8, & 14; prosecution presence and recommendation made hearing unfair and **partial**.

Claim IV

Board of Parole Hearings, denied parole, for as they stated per PC 3041(b);

> "This was the factors that we used, first of all the offense was carried out in a specially cruel and callous manner." (Exh. C., pg. 77, Ln. 16-18)
>
> Maximum 2-year denail given, reasoning;
>
> "In a seperate decision the panel finds that it's not reasonable to expect that parole be granted at a hearing during the following two years.
>
> And that was done primarily because again the offense was committed in an especially cruel manner..." (Exh. C., pg. 82, Ln. 8-13)

Per PC 3041.5 (2), the Board following the denial then outlined its recommendations; stay disciplinary free, get more self-help, and get another trade. (Exh. C. pg. 83-84, and Exh. J.)

In Claims I & II Petitioner pointed out his disagreements with the Statute(s), so he will re-assert them here without rehashing them in full.

Regarding the Boards recommendations Petitioner has a few things he would like to point out. The Board stated;

> "We feel you should get some self help to furthur assist you in understanding what your commitment offense is or was." (Exh. C., pg. 83, Ln. 19-21)
>
> Earlier having stated;
>
> "We also want to commend you for your work while you have been here in prison." Exh. C., pg. 82, Ln. 1-3
>
> What work? Answer, starting self-help Groups, etc.
>
> "You have several chronos. You just completed, there is a chrono 1/31/06 that you completed the Victim Awareness Offender Program and you were **instrumental** in **requesting** the program for Mule Creek." (Exh. C., pg. 39-40, Ln. 26-4) www.realisticreform.com (Exh. Q.)

In recommending get some self help, Petitioner's logical question would be, what self help? The Board did not state what kind to get, just to get some. After the denial was read, explaining the why's of denial and what he should do, he said, "Can I respond to any of that?", his lawyer told him no. (Exh. C. pg. 84, Ln. 19-21)

Society is being scammed, yes, **scammed**, and this Petitioner and other prisoner's Due Process Rights are being trampled over when told to participate in Self Help groups offered in

California and this reasoning being used to justify parole-denials.

Scammed, strong language, what justifies its use? Inmate Richard Mejico, the founder of Criminal Gangs Anonymous (CGA), the same CGA cited in Petitioner's Board Hearing, (Exh. C. pg. 38), the same CGA currently functioning in several prisons and allowed inter-national news coverage by California Prison-Personnel as a unique self help group;

Yet Richard Mejico, was told by a Board/Panel, that he needed, more self help; went to Board, August 26, 2005. (See Exh. A., # 4, & Exh. D.), that proves the scam.

Richard Mejico was allowed to start the re-entry program at Mule Creek State Prison, the prison Petitioner is in. The re-entry programs mission is to prepare paroling inmates to reintegrate safely back into society. If Sacramento, Mule Creek State Prison, can en-trust a prisoner with initiating the re-entry program to protect society, then how can Richard Mejico be in need of self help?

Richard Mejico's CGA program was embraced because nothing else offered by the prisons seem to be working; 70+% recidivism rate in spite of self-help offered by prisons.

This Petitioner since 2005 has been trying to get the prisons to re-habilitate sex-offenders, a true danger to society. Submitting-proposals, (Exh. K), which were ignored, filing prison-appeals to protect children from child-predators in visiting-rooms, appeal denied, writ currently pending in California Supreme Court, #S142658, (Exh. L); another pending writ which was filed after prison-appeal was

denied is one seeking that **all** persons convicted of sex-crimes be re-habilitated prior to release. (Exh. M.)

Through legal-filings, prison appeals and proposals, and through a web-site, www.realisticreform.com, Petitioner is seeking reform of the prison system and implementation of realistic rehabilitative measures. (See Exh. Q.)

Even the current acting Secretary of Corrections, concedes that re-habilitation (self-help) is not possible under current prison-conditions. (Exh. N.) He blames it on overcrowding, but even before it became "overcrowded", California still had the highest recedivism rate (70+%) in the nation, despite the fact it spends the most money on prisons.

Get Another Trade

Petitioner has gotten two-trades while incarcerated, one his family paid for, Paralegal Certification, and the computer Vocations course he completed in prison. (Exh. C. pg. 82, Ln. 3-8).

Petitioner was told to get a trade that does not involve and or surround his current training, administrative management, just in case his career choice does not pan out. (Exh. C. pg. 83, Ln. 12-19)

Again, the public is getting **scammed** and Life-Prisoner's going before the Board are having their Due-Process rights ignored/trampled.

Why? California is spending 100's of millions in offering Prisoner's educational/vocational opportunities, but what overall effect is it having on improving public-safety? This Petitioner in an information request posed that and other

questions, (Exh. D.); requesting specific information, data-analysis, as to how much money prisons spend on offering Vocations, how many prisoner's get out and secure employment in the trained fields, what type of tax-revenue was being realized from inmates released and securing employment in the trained field, and did the numbers (money-spent) prove that the expended revenues (tax-dollars) were cost-effective.

Public Information request was filed in January of 2006, 2-months prior to Petitioner's parole hearing. In early March, Sacramento sent the request to MCSP Facility 'C' Captain Robinson, and told him to respond to Petitioner. Robinson stated clearly to Petitioner that he could not respond to the request, and doubted if the California Department of Corrections and Rehabilitation was even in possession of such data. (Exh. A., # 5) The information request has still not been responded to, 8-months later.

Petitioner even filed a prison-appeal on this issue, (Exh. O.), the prison told him he had no standing to file such an appeal; so Petitioner listed that and other ignored appeals on his website, www.realisticreform.com, requesting the public to demand action on such, in his opinion, common-sense issues.

Petitioner's constitutional point is this, he's doing more to re-habilitate himself in Vocational training and in other areas then the prisons are, and even their head-person states he can't do it, (Exh. N.), the recidivism rate reflects that the prison can not do it and this was before the "overcrowding", so it seems the only solution is for the

Courts (State/Federal) to step in and assess parole-eligibility and in Petitioner's **opinion**, to re-structure the prisons to trully bring about public-safety.

Know More About Job

Petitioner was criticized in the denial for his parole-plans, Board stating;

> "Your parole plans was not a total package as well. You sat here and you could stay with your sister or you could stay with your brother and when the Deputy Commissioner asked you about your employment plans well you said that you were going to work with your brother in a restaurant and you didn't know what type of restaurant it was. You said you thought it was something like a Denny's okay. If your going to be employed, then we go furthur into the finding out about the restaurant,
>
> what you would do there, well he initially wanted me to be the Human Resources person but I need furthur training, then you said that I'll do dishwashing, I'll do anything but then you need to find out what type and pin down as to what job you are going to have." (Exh. C., pg. 80-81, Ln. 24-13)

This Petitioner took the Board three parole-plans, one with his brother Du Shawn Johnson who is a Detective for the Visalia Police Department and owns several business'; when offered the job, Petitioner reasonably did not request every business-detail of his brother's business, conveyed to the Board;

> "He owns kind of like a Denny's or something like it, it's not a Denny's but it's something along those lines. Some **chain** of restaurants that he bought into so it's that type of restaurant and go to school."
>
> When asked what he would do.
>
> "What ever he assigned me. He wanted me to be a Human Resource Manager, **I think** I would need some more training to do that but wash dishes,

> what ever he needed me to do." (Exh. C., pg. 50, Ln. 13-26)
>
> When asked about his other parole-plans.
>
> "The next plan is to go either to my grandparents house who live in San Francisco and or go to my sister's house who lives in Oakland."
>
> "I don't have any employment plans for either residence but there was a parole officer who came up here and he was informing us (those who volunteered to go talk to him) about PAC, you know when a person paroles and they go and PAC would advise them of where the jobs are located and just some things like that so I would be at PAC meeting the very next day and try to get a job." (Exh. C. pg. 51, Ln. 2-15)
>
> Note: PAC is a mandatory-program for all parolees, where they go to a work-shop, job-fair, with jobs that specifically hire parolees.

Petitioner had also been approved for Federal-Financial Aid for College, providing the documentation to the Board, (Exh. C., pg. 8, Ln. 13-25).

With all of the beforementioned in mind, Petitioner finds it hard to comprehend how his parole-plans were incomplete? And how his actual-responses to the Boards questions about his brother's restaurant, could be mis-construed in the denial as Petitioner being confused as to what his role would be; Petitioner was to be the Human Resource Manager, but felt he needed more training and was willing to do whatever his brother needed him to do while he got it, yet the Board told him to pin down what he was going to do. (Exh. C., pg. 50, Ln. 13-26, & pg. 80-81, Ln. 24-13).

Lack of Remorse

In denial my remorse was questioned, yet Board acknowledged that Doctor who gave Petitioner his psyche-

evaluation, that his report was great considering it came from that particular Doctor. (Exh. C., pg. 47-49), and the Doctor stated that Petitioner's remorse was real, that he accepted responsibility for his crimes, but the Board described his remorse and acceptance in this manner;

> "I don't really think that you understand the magnitude of what you did by this kidnap for money, so you need to take a look at that because I don't think in here, just in the way that you talked to us today, we didn't get a sense that you really understood the nature of your crime, or your commitment offense.
>
> Yeah you said okay I know what I did **blah, blah, blah** but do you know what you did to the victim or how it impacted that particular victim." (Exh. C. pg. 83-84, Ln. 21-5)
>
> Later stating;
>
> And your plan, we talked a little bit about you going to LA, you had testimony and the record there from your crime partners who said yeah he did this and yes he did that.
>
> There was some inconstancies on what took place, who was involved in the conversations and we just feel that you need to take a little self help, analyze and come to the realization as to what actually took place." (Exh. C., pg. 84, Ln. 5-13)

Just another point of why in Claim I & II Petitioner contends past crimes should not be cause to deny parole, but the Commissioner's closing statement is even more egrigious because it directly conflicts with an earlier one he made;

> "Nothing that happens here today will change the finding of the court."
>
> Okay, Petitioner was not charged nor convicted of going to LA, which was alleged by his crime partners.
>
> "We are not here to re-try your case, we are here to determine if you are suitable for parole." (Exh. C., pg. 7, Ln. 1-5)

If nothing that happens in the hearing will change the finding of the Court, and the point of the hearing is not to re-try the case, then how can the Board Constitutionally state that Petitioner needs self help because he failed to admit to committing acts his crime-partners stated he did, which he hadn't been charged or convicted of?

Claim V & Conclusion

Blah, Blah, Blah, is what Petitioner's initial-parole hearing turned out to be in regards to the Board respecting the Constitutionally protected liberity interest of the process. Simply put, the fix was in, Claim II, and they did what they wanted to do instead of what the Constitution mandated they do.

The cumulative effect of all of the beforementioned violations rendered Petitioner's entire parole-hearing process, unconstitutionally sound.

Petitioner's continued incarceration and being forced to go through the California Parole Hearing Process (Farce); will exacerbate and indefinently prolong a '**Miscarriage of Justice**'.

Although not a miscarriage of justice in the conventional sense of actual/factual innocence, the United States Supreme Court has made the following comments on the subject;

> "Most important, however, the focus on innocence assumes **erroneously**, that the only value worth protecting through federal (State) habeas review is the accuracy and reliability of the guilt determination.
>
> But "[o]ur criminal justice system, and our Constitution protect other values in addition to the reliability of the guilt or innocence

determination, and the statutory duty to serve **'law and justice'** should similarily reflect those values. Sawyer v. Whitley (supra) 112, at 2528, quoting, Smith v. Murray 106 S.Ct. 2661, at 2672

Later stating;

"While the conviction of an innocent person may be the archetypal case of a manifest miscarriage of justice, **it is not** the only case. There is no reason why "actual innocence" must be both an animating and the limiting principle of the work of federal (State) courts in furthering the "ends of justice." As Judge Friendly emphasized, there are contexts in which, irrespective of guilt or innocence, constitutional errors violate fundamental fairness. Friendly, is innocence irrelevant?

Fundamental fairness is more than accuracy at trial (Parole-Hearings); justice is more than guilt or innocence."
Sawyer at 2530

In another Opinion, having nothing to do with Parole-Hearings, but addressing Miscarriages, Dretke v. Haley (2004) 124 S.Ct 1847, at 1854, Justice Stevens dissent,

"The unending search for symmetry in the law can cause judges to forget about justice. This should be a simple case."

Symmetry in the law will tempt Courts to limit the re-view of this case to only Board issues, and not consider the overall effect that all the Claims have had on making the process a Farce on Justice.

at 1855 "...when cause and prejudice standard is inadequate to protect against fundamental miscarriages of justice, the cause and prejudice requirement **must** yield to the imperative of correcting a fundamentally, unjust incarceration. (Quoting Engles v. Isaac 456 U.S. 107, 135)

"That the State has decided to oppose (Parole) the grant of habeas releif in this case, ...might cause some to question whether the State (County of San Mateo) has forgotten its overriding "obligation to serve the cause of justice."
United States v. Agurss 427 U.S. 91, 111

> "But this Court is surely no less at fault. ... "the Court has lost sight of the **basic** reason why the writ of habeas corpus indisputably holds an honored position in our jurisprudence. Engle 456 U.S., at 126
>
> Habeas corpus is, and has for centuries been, a "bulwark against convictions (continued incarcerations) that violate fundamental [541 U.S. 399] fairness", fundamental fairness should dictate the outcome of this unusually simple case."

at 1856, Justice Kennedy's dissent;

> "The law must serve the cause of justice."
>
> "[Judicial] discretion can inspire little confidence if Officials sworn to fight injustice choose to ignore it."
>
> San Mateo County Officials almost literally cost Petitioner his life, and despite the obvious dangers/threats recognized by the Court, admitted to by police-officials, everyone in the County with a Fiduciary duty to intercede, failed to do so.
>
> State Attorney General Office, Deputy Attorney General Morris Lenk and other's with Authority over San Mateo County, has and continues to ignore the over-all constitutional violations suffered by Petitioner.

Fundamental fairness should dictate the outcome of this unusually simple but convoluted case, in which;

> "And what is **clear** is that the **system FAILED** him (Petitioner) ultimately,... (Rt. 1676)

And similar to Judicial-Precedent set in the Rosenkrantz's case, Petitioner should be released by the Court. (Exh. P.)

Respectfully Submitted,

La Merle R. Johnson, Petitioner. Dated: _____

SAN MATEO COUNTY SUPERIOR COURT DENIAL OF WRIT

(ENDORSED)
FILED
SAN MATEO COUNTY

OCT 18 2006

Clerk of the Superior Court
By GRACE LACEY
DEPUTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN MATEO

In re:

LA MERLE R. JOHNSON

On Habeas Corpus.

Case No. SC-31800B
HC-1811

ORDER OF DENIAL

The Court has received and reviewed the Petition for Writ of Habeas Corpus filed by Petitioner, La Merle R. Johnson, on August 22, 2006. For the following reasons his writ petition is denied.

BACKGROUND

The following facts are taken from the Unpublished Opinion of the Court of Appeal for the First Appellate District affirming Petitioner's conviction, filed in this action on August 8, 1997. On the afternoon of July 6, 1993, Petitioner contacted co-defendant Ardie James Moreland ("Moreland"), arranged a meeting, and told Moreland to bring guns.

Petitioner, Moreland, and Lashon Brown ("Brown") drove to a restaurant and discussed a plan to rob Aasa Knowles ("Knowles") on the theory that her boyfriend, Ellis Foots

("Foots"), a drug dealer, would keep some of his cash at her apartment. The three drove to Knowles' apartment, parked nearby, and waited. When Foots arrived at Knowles apartment around 7 p.m., the three decided to rob him as well.

Petitioner and Moreland determined that they should take Foots to various places where he kept cash and that they needed additional help. Petitioner called, picked up, and returned with co-defendant Taryn Washington ("Washington") joining Moreland and a man known as Mike or "Pookie." Petitioner proposed that they approach Foots, posing as police officers, and "arrest" him.

At about 9:30 p.m., as Foots, Knowles, and a man named Thomas left Knowles's apartment, two cars approached them and disgorged armed men. Knowles fled and called police. Foots started running and threw a bag of cocaine over a fence. Yelling that they were police officers, Petitioner and Moreland ordered Foot to lie down on the ground. When Foots complied, Petitioner held a gun on Foots while Moreland restrained Foots using handcuffs Petitioner had given him. Moreland put Foots in the back of one of the cars, and Petitioner told Moreland to "Get him out of there, away from the scene." Moreland and Washington took Foots to the apartment of co-defendant Marion Bonds ("Bonds") in Oakland.

Back in Daly City, a police officer responding to a call about the incident saw defendant walking away from the scene wearing clothing that matched the description of a possible suspect. When the officer asked defendant to stop, Defendant became verbally abusive. Other officers arrived and arrested

defendant for obstructing and resisting a police officer (PC § 148). Petitioner was taken to Redwood City Jail and released around 2:00 a.m. the next morning.

Meanwhile at the Bond apartment in Oakland, Moreland and Washington had taken Foot's wallet, gold chain, cellular phone, and keys, used duct tape to blindfold Foots, removed the handcuffs and bound Foots' hands and feet with ropes. When Foots tried to loosen the ropes, one of the men shot him with a stun gun and replaced the handcuffs. Moreland became nervous when Petitioner did not page him as promised, made a plan to kill Foots, drove into the Oakland hills to find a place to dispose of the body, returned, and decided to kill Foots if they did not hear from Petitioner within the hour.

Petitioner arrived at the Bond apartment in Oakland about 4:30 a.m. Petitioner and Moreland discussed how to get Foots' money and asked Foots how much his people would pay "for his safety." When Foots told them he had $8,000 in his house, Petitioner drove to the house, but upon seeing Foots' "soldiers" there, returned without having gone inside.

Petitioner and Moreland decided to hold Foots for ransom, had Foots call his friend, Louis Aterberry ("Aterberry") to raise ransom money, and told Foots they would kill him if their ransom demand was not met.

Petitioner and Moreland decided that since Petitioner resembled Foots, they could use Foots' credit cards to get cash and make purchases. The obtained the "PIN" numbers, credit limits, and other information from Foots, flew to Los Angeles, and used Foots' cards to obtain cash, jewelry, clothing, and

other items. The next morning, while Petitioner was loading the purchases into a rented van, Moreland was arrested trying to use one of Foots' credit cards.

Petitioner returned to Bonds' apartment. Washington made the telephone calls to arrange the ransom and Petitioner and Bonds told Washington what to say. On the evening of July 8, Petitioner and Bonds went to pick up the ransom, Petitioner retrieved the backpack containing the money, and then returned to the apartment to count the money.

While in custody in Los Angeles, Moreland disclosed the location of the Bond apartment. A tactical team forced the apartment door, found ransom money strewn about; found Foots, still handcuffed, bound, and blindfolded with duct tape; found loaded semiautomatic handguns; and found Petitioner, Bonds and Washington trying to hide in a bedroom closet. Foots was held captive, bound and blindfolded from July 6, 1993 to July 8, 1993.

Prior to Trial, on December 23, 1994, the People brought a motion to deem Petitioner's plea agreement breached. The People's motion and supporting declarations establish that Petitioner entered into a plea agreement whereby Petitioner would be permitted to plead to charges carrying a maximum possible punishment of 17 years, eight months in prison, and in exchange, Petitioner agreed to testify truthfully in the future trials of People v. Porterfield and Knight.

In the motion to deem Petitioner's plea agreement breached, the People asserted that at the Porterfield trial, Petitioner changed his testimony mid-trial, stating that his

previous testimony was told to him by the District Attorney's investigator and was false. Petitioner subsequently admitted under oath that the story about false or planted testimony was a lie. The Porterfield trial did not result in a conviction. The court granted the People's motion and Petitioner's plea agreement became null and void.

A jury found Petitioner guilty of kidnapping for ransom, second degree robbery, and assault with a firearm, and found true enhancements for personal use of a firearm in connection with the kidnapping and assault charges. On January 19, 1996, Petitioner was sentenced to life plus 11 years in prison. The Court of Appeal affirmed Petitioner's conviction on August 8, 1997.

In the instant petition, Petitioner asserts (1) That it is unconstitutional to deny parole based on facts that can never be changed; (2) That Petitioner was told by several sources that he would not be receiving a parole date at his initial hearing because, contrary to the Penal Code § 3041(d) requirement that a release date be set, the Board had an unspoken/underground policy that inmates do not receive parole grants at their initial hearings; (3) That the San Mateo District Attorney has a conflict of interest when making parole suitability recommendations because a prior Assistant District Attorney had threatened to "fry Petitioner's ass" and revoke Petitioner's plea agreement if the Assistant District Attorney failed to get a conviction based in part on Petitioner's testimony in People v. Porterfield; and (4) that the Parole Board was not justified in recommending that petitioner (a) get self-help (b) stay discipline free, and (c)

learn a trade or in basing the decision to deny parole on the cruel manner of the offense or Petitioner's perceived lack of remorse.

THE DECISION OF THE BOARD OF PRISON TERMS TO DENY PETITIONER A PAROLE RELEASE DATE WAS PROPER.

A. Habeas Corpus Is An Appropriate Means of Challenging the Denial of Parole.

A petition for writ of habeas corpus is proper to challenge a denial of parole by the Board of Prison Terms. (*In re Sena* (2001) 94 Cal.App.4th 836, 840.)

> Penal Code section 3040 gives the Board the power to allow prisoners sentenced to indeterminate terms to go on parole outside the prison walls and enclosures. The Legislature has specified that one year prior to the inmate's minimum eligible release date, a panel of at least two commissioners of the Board shall meet with the inmate and shall normally set a parole release date. (Pen. Code, § 3041, subd. (a).) However, the panel or the Board need not set a release date if "it determines that the gravity of the current convicted offense or offenses, or the timing and gravity of current or past convicted offense or offenses, is such that consideration of the public safety requires a more lengthy period of incarceration for this individual, and that a parole date, therefore, cannot be fixed at this meeting." (Pen. Code, § 3041, subd. (b).)

(*In Re Morral* (2002) 102 Cal.App.4th 280, 289, see also *In Re Dannenberg* (2005) 34 Cal.4th 1061, 1079.)

B. Criteria For Granting or Denial Of Parole And Standard of Review.

"The factor statutorily required to be considered and the overarching consideration is `public safety.' As stated in subdivision (b) of Penal Code section 3041, the Board `shall set a release date unless it determines that the gravity of the

current convicted offense or offenses, or the timing and gravity or past convicted offense or offenses, is such that *consideration of public safety* requires a more lengthy period of incarceration for this individual." (*In re George Scott* (2005) 133 Cal.App.4th 573, 591 [italics added by court].) Title 15 of the California Code of Regulations § 2402 provides: "…regardless of the length of time served, a life prisoner shall be found unsuitable for and denied parole if in the judgment of the panel, the prisoner will pose an unreasonable risk of danger to society if released from prison." (*In re George Scott* (2005) 133 Cal.App.4th 573, 591 [quoting 15 Cal. Code of Reg. § 2402].)

The standard of review for a Denial of Parole following a parole hearing was established by the California Supreme Court as follows: "Accordingly, we conclude that the judicial branch is authorized to review the factual basis of a declaration of the Board denying parole in order to ensure that the decision comports with the requirements of due process of law, but that in conducting such a review, the court may inquire only whether some evidence in the record before the Board supports the decision to deny parole, based on the factors specifically specified by statute and regulation." (*In re Rosenkrantz* (2002) 29 Cal.4th 616, 658.)

C. The Board's Reliance On Petitioner's Callous Disregard For The Victim When The Crime Was Committed, Plus His Current Lack Of Sincerity and Remorse, Plus The Incomplete Nature of His Work Plans Constitute Some Evidence Supporting The Finding that Petitioner Posed A Risk to Public Safety.

Petitioner quotes Penal Code § 3041(b) for the proposition that the Parole Board **shall** set a release date unless it determines that the gravity of the current convicted offense or past convicted offenses is such that consideration of the public safety requires a more lengthy period of incarceration. However, while this section mandates that a date be sent when there is no perceived risk to public safety, it also precludes the setting of a release date when release is perceived to threaten public safety. '[T]he gravity of the commitment offense or offenses alone *may* be a sufficient basis for denying a parole application, so long as the Board does not fail to consider other relevant factors.' (*In re Ramirez* (2001) 94 Cal.App.4th 549, 569 overruled on other grounds in *In re Dannenberg* (2005) 34 Cal.4th 1061, 1100; citing *In Re Seabock* (1983) 140 Cal.App.3d 29, 37-38.)

In *In re Dannenberg*(2005) 34 Cal.4th 1061, 1071, the California Supreme Court held: "Accordingly, we conclude that the Board, exercising its traditional broad discretion, may protect public safety *in each discrete case* by considering the dangerous implications of a life-maximum prisoner's crime individually. While the Board must point to factors beyond the minimum elements of the crime for which the inmate was committed, it need engage in no further comparative analysis before concluding that the particular facts of the offense make it unsafe at that time, to fix a date for the prisoner's release." (Id.)

Petitioner quotes *Biggs v. Terhune* (9th Cir. 2003) 3134 F.3d 910, 917 for the proposition that "A continued reliance in

the future on an unchanging factor, the circumstances of the offense and conduct prior to imprisonment, runs contrary to the rehabilitative goals espoused by the prison system and could result in a due process violation." (Id.)

In contrast to the situation in Biggs, however, the transcript of the instant hearing, although missing a number of pages, discloses that the Board didn't feel that Petitioner was being particularly honest at the time of the hearing (Transcript Page 80:13-23), a finding subject to change that would tend to support the conclusion that Petitioner's release presented a potential danger to society; that his Parole employment plans were an incomplete package (Transcript Page 80:23-81:13), a factor subject to change that increases the likelihood that Petitioner would return to criminal activity in order to earn a suitable living; and that Petitioner did not exhibit remorse (Transcript Page 81:17-82:1), a factor subject to change that increases the likelihood that Petitioner will commit further crimes. These mutable findings, in addition to the findings regarding the nature of the offense itself, constitute "some evidence" supporting the finding that the parole of Petitioner "would pose an unreasonable risk of danger to society or a threat to public safety."

D. Petitioner's Assertion Of An Underground Policy Not To Grant Parole On The First Hearing Or That Petitioner Was Advised In Advance That Parole Would Be Denied Is Irrelevant Because The Instant Board Made Specific Findings Justifying A Denial of Parole to Petitioner At This Time.

Petitioner asserts that there exists an underground policy in which parole is always denied at the first hearing and that he was told in advance that his parole would be denied. There is no evidence that this board made a decision to deny Petitioner parole before reviewing the file or considering the facts. The fact that other individuals predicted the outcome of Petitioner's hearing suggests that the board followed predictable guidelines. Even if one or more boards have acted arbitrarily in other cases, such actions are irrelevant in the instant case because the record reflects that the board made multiple findings of fact, each of which are independently more than sufficient to justify denial of parole.

Under Penal Code § 3041 and Title 15 of the California Code of Reg. §2402, there is no presumption that a life inmate is entitled to parole or that he/she is automatically suitable for parole based on the amount of time served. (*In re Honesto*, (2005) 139 Cal.App.4th 81, 92-93, see also *Dannenberg, supra*, 34 Cal.4th at 1093.) Here, the Board's decision was not an abuse of discretion. The record of Petitioner's parole hearing indicates that there was some evidence to support the Board's decision to deny him parole and their statement of reasons for the denial was adequate. The Board considered the relevant factors under Title 15 of the California Code of Regulations §§ 2401, 2402 and 2281. Based on these factors including the gravity of the commitment offense, Petitioner's institutional behavior, and his psychological evaluations, the Board's decision to deny Petitioner a parole release date was proper. (*Dannenberg, supra*, 34 Cal.4th at 1094-1096.)

E. While The District Attorney Objected To Parole There Is No Evidence Of An Unreasonable Bias Arising Out of The Porterfield Trial.

Petitioner asserts that the San Mateo District Attorney has a conflict of interest when making parole suitability recommendations because a prior Assistant District Attorney had threatened to "fry Petitioner's ass" and revoke Petitioner's plea agreement if the Assistant District Attorney failed to get a conviction in People v. Porterfield. While the District Attorney did oppose Petitioner's parole, there is no evidence that the opposition was a function of bias.

Petitioner has made several collateral attacks on his conviction where the claim of error related to the prosecution's rescission of the plea agreement, including two prior habeas petitions filed in this court on July 30, 1999 and March 29, 2000. Each petition was denied. It has long been the rule that, absent a change in law or fact, courts will not reconsider previously rejected claims. (*In re Clark* (1993) 5 Cal.4th 750, 767.)

F. There Is Some Evidence Demonstrating That The Board Did Not Act Arbitrarily In Recommending That Petitioner (1) Get Self Help; (2) Stay Discipline Free; (3) Learn A Trade; (4) Perceiving That Petitioner Lacked Remorse; or (5) Considering the Cruel Manner of Petitioner's Offense.

Petitioner takes exception to the fact that the Parole Board recommended that he get self help, stay discipline free, learn a trade, found him to lack remorse, or that the Board considered the nature of his crime.

It is not clear what the Board based its recommendation concerning self help because Pages 78–79 of the Decision are missing from the Transcript. Petitioner must (i) state fully and with particularity the facts on which relief is sought and (ii) include copies of reasonably available documentary evidence supporting the claim. (*People v. Duvall* (1995) 9 Cal.4th 464, 474.) Moreover, the logic of the recommendation that a petitioner seeking parole remain discipline free while incarcerated is self evident. While Petitioner contends that he has learned several trades or businesses while incarcerated, the fact is that Petitioner's plan as presented at the parole hearing was to work in a restaurant and perform human resource functions, wait tables or wash dishes (Transcript p. 81:6-13.) The board also specifically found that Petitioner lacked remorse for the victim. (Transcript at p. 81:17-21.)

The Board also found that the underlying offense was committed in an especially cruel manner, demonstrating "exceptionally callous disregard for human suffering" in that the victim was left bound for several days with duct tape over his eyes and fearing that he might be killed at any time. (Transcript at 82:11-83:7.) The Board found that the motive for the crime was inexplicable and very trivial in relation to the offense. (Transcript at 82:25-83:2.) It was appropriate for the Board to consider these matters and the findings are supported by some evidence.

CONCLUSION

The record establishes that there existed "some evidence" supporting each of the Board's findings, each of which independently sufficed as grounds supporting the finding that Petitioner would present a threat to society, and therefore justifying the denial of parole.

DATED: OCT 16 2006

Craig L. Parsons
Presiding Judge, Criminal

PETITIONER'S RESPONSE TO SUPERIOR COURT DENIAL

PETITIONER'S REPLY TO SUPERIOR COURT DENIAL

As in most life-crimes, the FACTS are ugly, and this Petitioner acknowledges his guilt, and the FACT, that this crime does not show him in his best light. Yet, the law/constitution recognizes certain rights (liberty-interest) in a parole-hearing setting, and Petitioner asserts that those interests recognized by the law have been violated in this instance.

STATUTE ALLOWING BOARD TO DENY PAROLE BASED ON FACTS THAT CAN NEVER BE CHANGED IS UNCONSTITUTIONAL, CALIFORNIA CONSTITUTION, ART. I, § 7(a), 15, 17, 24, & 29, U.S.C.A. 5, , 8, & 14

Superior Court in its denial, failed to address the heart of Petitioner's claims as to why the Statute is unconstitutional, and or address the conflict raised;

> P.C. 3041(b), allows for denial based on facts of crime(s).
>
> P.C. 3041.5(2), states, "...where a parole date has not been set for the reasons stated in subdivision (b) of section (3041), the board shall send the prisoner a written statement setting forth the reason or reasons for refusal to set a parole date, and suggest activities in which he or she might participate that will benefit him or her while he or she is incarcerated."

Conflict; Board that is enabled to deny parole in any part based on the unchangeable facts of past-crimes, can not fulfill their statutory obligation to suggest activities to a prisoner that will benefit them; benefit them towards a release date, the only reasonable-interpretation; because, nothing the Board could suggest can change the past.

Since the past is unalterable, and as stated in the earlier sections of this writ, Parole-Board releases are rationalized to the public and on record as having to do with

in-prison positive behavior (pages 9-11 of writ), it is only logical that statutorily allowing for past-crimes FACT-reasoning to justify denial of parole, will lead to constitutional abuses;

- Cal. Const. Art. I, §15, U.S.C.A. 5, A person **SHALL** not be twice in jeapordy for the same offense. Yet, when it is statutorily allowed for Liberty-interest to be denied based on matters not subject to change, then that person is twice being put in jeapordy; which leads to other constitutional offenses.,

- Cal. Const. Art. I, §17, U.S.C.A. 8, A person **SHALL** not be subjected to cruel and unusual punishment. Yet, the statute opens the door to just that, **why**?;

- Cal. Const. Art. I, §7, 24, 29, U.S.C.A., 5 & 14, A person **SHALL** not be denied 'Due Process', or, 'EQUAL PROTECTION' of the laws.

  Yet that is not possible when Boards can take similarily situated (Lifer's) inmates, and treat them in an unequal fashion. How is this done?;

All life-crimes contain FACTS that the Public through its criminal-process has deemed horrific enough to warrent life in prison, which inherently contains the possibility that the convicted may never be released. But, as the Court(s) have recognized, In re: Dannenberg 23 Cal.Rptr.3d 417 (2005), Biggs v. Terhune (supra) 334 F.3d 910, there is a Liberty-interest in Life-sentences with the possibility of parole;

In allowing Parole-Boards the ability to deny parole based on unalterable facts, the Legislators have **Statutorily** positioned them (Board) to violate the 'Equal Protection' clause of the Constitution. Horrific-FACTS never change, in that **all** Lifer-inmates are equal, yet in statutorily allowing for any Board to at any time decide that Horrific-FACTS are no longer

so horrific as to warrent continued incarceration, OR, to allow them the ability to at any time state that the Horrific-FACTS remain so horrible as to warrent the continued incarceration of someone, is to allow for a system of 'ARBITRARY & CAPRICIOUS' parole grants or denial, with no real threshhold for Judiciary review; which opens the door for the subjection of Lifer-Inmates to 'Cruel & Unusual Punishment' and to be continuously (Twice & Many Times More) be put in jeapordy for the same offense.

As earlier stated, Parole-Boards rationalization for parole-grants, ALLWAYS, center around in-prison positive behavior and FACTS, (job, family-support, etc.), that have nothing to do with unchangeable facts of the past, strictly and specifically dealing with matters related to the future. With this being the case, the only way to ensure that inmates rights are not constitutionally violated as previously listed, is to strike the Boards ability to deny parole based on the unchanging factors of committement offenses.

'SOME EVIDENCE' STANDARD OF REVIEW IS CONSTITUTIONALLY VAGUE, NOT AFFORDING MEANINGFUL STANDARD OF 'JUDICIARY-REVIEW'

Superior Court cited the 'Some Evidence' standard of review, in denying writ. The Board when denying parole is given a checklist of things to cite in order to ensure that Judicial-Review will find that 'Some Evidence' was present to justify the Boards findings. There is never NOT 'Some Evidence' present if a Board wants to deny parole, yet does that mean denial was warrented; Petitioner reasonably asserts, many times no, but what meaningful review can a petitioner receive if the

Court's review continues to be limited ('Some Evidence') in this fashion?;, Petitioner believes none.

SUPERIOR COURTS FINDING OF SOME EVIDENCE IS DEBATEABLE AMONGST REASONABLE JURISTS

The Board stated that Petitioner lacked remorse, despite the fact that several times throughout the hearing he expressed it. (Full Hearing Transcript Included For This Court To Make Its Own Assessment). Superior Court cited this as justification for denial, and that such an attitude was indicative of potential future criminality.

Prior to going to Board, a Psychological Evaluation is mandated, where the trained Psychologist evaluates the inmate for hours, and then writes a report. (Exh. C. pg. 47-49; Board described Psychological-Evaluation of Petitioner, good, especially in light of Psychologist it came from. Yet Board ignored the Psychologist's trained/educated opinion of remorse being real, of Petitioner accepting his responsibility for crime, of him no longer posing a threat to society, and instead replaced it for their own in justifying denial.) (Exh. R pg. 7-8)

The legal-question then is, how can an untrained Board ignore the findings of the Statutorily-Mandated psychological evaluation, replace the Psychologist's opinion with their own, and then the Petitioner receive meaningful review (Calif. Const. Art. I, §7(a), 15, 24, 29, U.S.C.A. 5 & 14, 'DUE PROCESS') if the Court, is limited to re-citing the Boards Findings/statements indicative of 'Some Evidence'? And if the Boards opinions surrounding 'Remorse' supersede the Psychologist, then why is

the psychological evaluation mandated?; Board does not like the evaluation, in spite of complimenting it as in this instance, and then they ignore it, not only ignore it, but again in this instance, recommend 'Self-Help', which the evaluation stated was not needed. (Exh. R, pg. 8)

Boards finding that Petitioner lacked remorse, conflicts with Psychological-evaluation; as such there is **serious** question as to the validity of that finding, warrenting Judicial-Review to determine is the 'Some Evidence' standard met, when that 'Some Evidence' is conflicted by unbiased (Psychologist's) evidence duly trained/able to deliver opinion on question (Lack of Remorse) at issue?

REMORSE, REASONABLY NOT NECESSARY FOR PAROLE GRANT, REQUIREMENT OF SUCH CONFLICTS WITH PENAL CODE 5011(b)

> "The Board of Prison Terms **SHALL NOT** require, when setting parole dates, an admission of guilt to any crime for which an inmate was committed."

If an inmate does not have to admit the crime, meaning they can deny and or refuse to discuss it, then it reasons that he or she is not required to exhibit and or express remorse.

In this instance Petitioner **chose** to discuss the crime, conceded his involvement, and expressed his remorse, with the full knowledge that legally he was not required to do so; (this act reasonably indicates remorse and acceptance of responsibility) Both the Psychologist and the Board, per the law, advised Petitioner that he was not obligated to discuss the crime in any fashion.

LEGAL QUESTIONS RAISED BY P.C. 5011(b)

1: Does the Body of California Law, indicating that lack of remorse cited by Board or other's, (Psychologist, etc.), meets the standard of 'Some Evidence' to justify denial of parole, violate the Constitutional protections of 'Due Process' due to the inherent conflict it has with P.C. 5011(b)?

2: Does the Body of California Law, indicating that the presence of remorse is indicative of rehabilitation, violate the Constitution in its inherent conflict with P.C. 5011(b);

Does that Body of Law create a different class of inmates, whom if they exercise their right not to discuss the crime, admit guilt but ~~fail to~~ display remorse, or deny any culpability, how can they satisfy the precedent of remorse being necessary in order to secure a parole date?; (Due Process, Equal Protection)

Petitioner reasonably asserts that the 'Remorse' questions raised above, do violate the Constitution and the uncertainty of it prejudiced him when going before the Board; how?, what standard of review is present when the Board can base denial on the lack of something, remorse, that per the Statute a inmate/Petitioner is not required to have? Petitioner's constitutional rights in this instance have been violated; Due Process not reasonably obtainable under the currently accepted standards.

PETITIONER'S PAROLE PLAN AND JOB WERE REASONABLY A FULL PACKAGE

Petitioner has a job-offer, a housing offer, a support offer, from an Officer of the Law, yet the Board found that that was an incomplete package because Petitioner was unable to provide more personal details of his brother's business'; where if they trully had questions about it, they could have called the Police-Detective and asked them.

On 09/23/05, Petitioner had his Psychological-Evaluation, where he told the Psychologist the exact same thing he told the Board about his parole-plans; work for his brother and go to school. By the time he saw the Board 6-months later on March 22, 2006, he had secured Federal Funding for college.

The Board critisized Petitioner for not knowing the exact Job-Description he would have, yet, he told them what his job description would be; his brother wanted him to be the Human Resource Manager, but he felt he needed more education to fulfill that role, so he would do whatever his brother wanted him to.

Reasonably speaking, when a company is offering a potential parollee a job, with no clear indication when that person will be available to fill it, then the job-duties are subject to change because the business must reasonably fill vacant spots.

Constitutionally speaking, in this instance, what then is a reasonable standard of review?

IT IS UNCONSTITUTIONAL FOR BOARD TO SUGGEST MORE SELF-HELP, WHEN BOARD UNABLE TO SPECIFY WHAT TYPE OF HELP

Psychological evaluation was clear, Psychologist, Frank D. Weber, stated, "I do not recommend any treatment for either mental health or substance abuse issues."

In suggesting self-help, Board did not and could not specify which type to get, yet used it in its reasoning to justify denial.

Petitioner admitted his crimes, but failed to admit and has always denied certain allegations his codefendants said he did, in particular go to LA as listed in the Statement of FACTS

outlined in the Superior Courts denial, and which was based off of Appellate Courts unpublished Opinion on Direct Appeal. Despite being in the Statement of Facts of the Courts, Petitioner was never charged with going to LA, despite the voluminous evidence against him in his case, no evidence corroborated his codefendants claims of him being in LA.

As stated earlier, P.C. 5011(b), states that the Board can not deny parole based on an inmate failing to admit the crimes he was committed for, so reasonably speaking this would also apply to crimes the inmate was accused of yet never charged with.

In this instance, this portion of the denial and suggestion to take self-help to come to terms with it, clearly violates the statute; P.C. 5011(b). And careful review of the full record will show that the self-help suggestion by the Board, entail him admitting to things his codefendants said he did in/during the crime.

Constitutionally speaking, in this instance where the denial and subsequent/related Board-suggestions, are in violation of the Penal Code (Due Process), what then is the standard of review?

Superior Court also failed to address Petitioners assertions regarding self-help recommendations, in consideration to Richard Mejico's CGA & Re-Entry programs, (This writ, pg. 25).

VOCATIONAL TRADES

(This writ, pg. 26-28), Superior Court failed to address these claims.

//

SAN MATEO COUNTY HAS A CLEARLY RECOGNIZABLE CONFLICT IN REGARDS TO MAKING PAROLE RECOMMENDATIONS

Superior Court misstated FACTS & LAW, regarding this issue. One, it was not an Assistant District Attorney who made the threat of frying Petitioner's Ass, it was the Chief Prosecuting Attorney, the second in command in the District Attorney's Office; who today, is still the second in command.

There are two Presiding Judges in San Mateo County, the Honorable Craig L. Parsons, who responded to this writ and presides over criminal matters. And the other is the Honorable Stephen Hall, who prosecuted Petitioner's case when he then was a Deputy District Attorney for the San Mateo County District Attorney's Office, who's immediate boss at the time was the Chief Prosecuting Attorney, Steve Wagstaffe. In this Petitioner asserts, that reasonably speaking, the Hon. Craig L. Parsons had a conflict ruling on whether or not his Superior and or similarly ranked colleague (Presiding Judge Hall) aided in the creation of a conflict between Petitioner and San Mateo County, as outlined in pages 13-23; this in addition to the fact that two other Senior Judges, colleagues and those whom are Supervised by Presiding Judge Parsons if they still do criminal matters, Judge Forcum and Judge Hahn, are both outlined in the writ and on record of making damaging statements clearly indicative that reasonably a conflict exists.

Finally on this issue; Superior Court implies to reviewing Courts that the issue of conflict has been resolved in other collateral attacks, this is a false impression. While

it is true that Petitioner has filed several writs in the San Mateo County Court attacking his conviction, it is irrelevant that those writs were denied in this instance. Why? This is not a collateral attack on the conviction, as the denial pointed out, page 6, writ petition is properly before the Court regarding attack on parole-denial, and issue before the Court is whether or not activities between Petitioner and San Mateo County have resulted in a conflict revolving around the County District Attorney giving a parole-recommendation.

So for the Superior Court to indicate to reviewing Courts that they are procedurally barred from reviewing this issue, is in its simplest and politest terms, misleading and an inaccurate statement of law.

FACT THAT PAROLE BOARD ALLEGEDLY SATISFIED THE 'SOME EVIDENCE' STANDARD, DOES NOT MAKE IT IRRELEVANT THAT BOARD OPERATING AN ILLEGAL POLICY OF DENYING PAROLE, JUST BECAUSE, AT INITIAL PAROLE BOARD HEARINGS

Superior Court stated that since the Board had made specific findings justifying the instant denial, that the assertion by Petitioner of an underground policy is irrelevant; Petitioner respectfully disagrees.

Reasonably speaking, if in fact an underground policy exists, then the Board will be wise enough to go through their checklist of things to put on the record, 'Specific Findings', satisfying the 'Some Evidence' standard, to ensure that the policy is not exposed.

Petitioner was told by a Board Member, at his documentation hearing in 2003, that he would not be receiving a date, and by

other State Employees in a position to know the exact same thing. Superior Court stated, page 10, Line 6-8, "The fact that other individuals predicted the outcome of Petitioner's hearing suggests that the board followed predictable guidelines." Reasonably speaking, the Court's statement/view raises more questions then it answers; how could someone three years prior to the hearing, know that the Board would say Petitioners parole plan was incomplete, or that he lacked remorse despite the Psychologist stating that he had it, or that he lacked remorse when statutorily, P.C. 5011(b), he was not mandated to admit or in any way discuss the crime in order to receive a parole-date, and or that he was told to seek self-help in order to come to term with what really happened, again when P.C. 5011(b) states that he need not admit his crimes in order to receive a date?

In addition to the statistical data spoken of in the earlier portions of this writ, Petitioner provides the Court with the Declaration of Albert M. Leddy, an ex-District Attorney, ex-Chairman of the Board of Prison Terms, amongst other things, in which he gives statements & opinions that there is indeed underground policies. (Exh. S)

Petitioner has an absolute right to a fair and impartial Board Hearing, that was not possible when the Board was functioning on an underground policy.

Reasonable consideration of the individual and cumulative effect of all of the beforementioned issues indicate that Petitioner's Board Hearing was constitutionally unsound, added to that is this;

BOARD'S REGULATORY/ADMINISTRATIVE RULES CLEARLY CONFLICT WITH PENAL CODE 5011(b)

Title 15, 'INFORMATION CONSIDERED', Art. 2, §2236

> "The facts of the crime **shall** be discussed with the prisoner to assist in determining the extent of personal culpability. The Board **shall** not require an admission of guilt to **any** crime for which the prisoner was committed. A prisoner may refuse to discuss the facts of the crime in which instance a decision shall be made based on the other information available **AND THE REFUSAL SHALL NOT BE HELD AGAINST THE PRISONER.**"

Shall is mandatory language, Art. 2, §2236, states that the facts of the crime shall be discussed to determine culpability; then it states that the Board **shall** not require an admission of guilt to any crime for which the prisoner was committed, similar language to P.C. 5011(b), and it states that the prisoner does not have to discuss the facts of the crime, that a decision shall be made based on other information available and the refusal **SHALL** not be held against the prisoner.

Prisoner is committed for a Life-Sentence, so some degree of culpability is apparent; the Board shall not require an admission of guilt; as Petitioner was told specifically by the Board, (Exh. C. pg 9, Ln. 22-26);

> "Okay you **are not** required to admit your offense or discuss your offense however the panel does accept the findings of the court to be true."

The Board stated that it would accept the findings of the (Trial) court to be true; the trial Court did not find Petitioner guilty of going to LA, yet the Board recommended self-help for his refusal to admit it.

Board also called into question Petitioner's veracity for his failure to admit going to LA and or concede that his co-defendants statements as to his specific words/actions were correct; yet, the Board's actions **clearly** conflict with their own regulatory rules, §2236, which states that the prisoner's refusal to discuss and or admit to crimes, **SHALL** not be held against them.

Regulatory Authority/Rules, shall align with the Penal Code it enacts. §2236 appears consistent with Penal Code 5011(b), that is until you review §2281 which outlines what the Board is to consider for parole purposes;

> Title 15, §2281(b) "past and present attitude toward the crime."

Reasonably speaking, attitude towards the crime conflicts with the prisoner not having to admit and or discuss it; yet the Board is allowed to consider past and present attitude toward the crime. So, if as in this instance, a prisoner denies a act, the Board can deem he is dishonest, lacks remorse, and needs self-help to come to grips with it?

> Title 15, §2281(d) "Circumstances tending to show suitability:
>
> (3) "Signs of remorse. The prisoner performed acts which tend to indicate the presence of remorse, such as attempting to repair the damage, seeking help for or relieving suffering of the victim , **OR THE PRISONER HAS GIVEN INDICATION THAT HE UNDERSTANDS THE NATURE AND MAGNITUDE OF THE OFFENSE."**

Petitioner reasonably states, that the Board of Prison Terms and or the current name, Board of Parole Hearings, has **NEVER** paroled an inmate who failed to express remorse, **which** IS one of the justifications it can cite for paroling. **BUT**, if by statute

the prisoner does not have to admit and or discuss the facts of the crime, how can past or present attitude towards the crime and or **current** signs of remorse be legally applicable to determining parole suitability? It can not.

Furthermore, "...the prisoner has given indication that he understands the nature and magnitude of the offense.", **clearly** and **reasonably** calls for an admission of guilt. Petitioner reasonably states this, not one inmate has ever been paroled by the Board who failed to acknowledge guilt and remorse, not one, yet the law **clearly** states that that is not necessary.

The Board has enacted and enforced regulations that conflict with the Penal Code, and in this instance that enforcement is clearly prejudicing Petitioner because it calls for him to do something, (admit to his codefendants statements of his actions, some of which he was never charged nor convicted of), that the Penal Code and the Board's own regulations does not require him to do. P.C. 5011(b), Title 15, §2236, 'No admission of guilt necessary, nor shall it be held against prisoner.' So, not only is the Boards regulations in its entirety (§2236 & 2281(b) & (d)(3)), in conflict with the Penal Code, but in this instance the Board violated its own regulations when holding it against Petitioner for failing to admit to things he had never been charged and or convicted of; and even if he had been charged and convicted, the Board shall not hold a refusal to discuss it against him.

The Board is en-acting its own policies, some of which are underground, in addition other questions have now arisen;

BOARD CONSTITUTIONALLY UNABLE TO CARRY OUT ITS DUTIES OF ASSESSING REHABILITATION OF LIFE PRISONERS, WHEN SECRETARY OF CORRECTIONS AND CALIFORNIA GOVERNOR ON RECORD STATING THAT UNDER CURRENT PRISON CONDITIONS, REHABILITATION NOT POSSIBLE

James Tilton, Secretary of Corrections, in a Sacramento Bee Newspaper Article, August 01, 2006, Exh. N, stated;

"The Department of Corrections owns the responsibility to assist inmates who are willing to change their ways with basic tools, of education, life skills, drug treatment, and mental health, so they can be better when they leave corrections, not worse."

"**BUT** until I get overcrowding reduced...then I **don't** have the opportunity to provide the program that I believe is my charge."

Governor Arnold Schwarzenegger, on 9/21/06, told the Sacramento Bee Newspaper during an Editorial Staff meeting, Exh. T)

"Gov. Arnold Schwarzenegger said Wednesday that California needs more prison beds **before** it can run a successful rehabilitation program,..."

Federal Judge Thelton Henderson, told Sacramento Bee Reporter Andy Furillo, that California had only added the name Rehabilitation, not implemented it. (Exh. U)

And the California Lifer Newsletter Reported in its February/2006 release, that they are in possession of a letter by the Boards P.I. Officer, Bill Cessa, which states,

"[u]ltimately, the Board of Prison Terms only grants parole for lifers when it is convinced that the inmate has served a suitable amount of time in custody..." (Exh. V)

The Boards P.I. Officer has allegedly made statements indicative of an underground policy, ex-Commissioner Albert M. Leddy in a sworn Declaration stated that undergound policies exist, Governor and Secretary of Corrections on record saying that under current conditions rehabilitation not possible,

ex-Secretary of Corrections Jeanne S. Woodford outlined a very bleak picture of the State of Corrections in California in an Editorial, Exh. W, and Federal Judge Henderson who is considering taking the entire California Corrections system into Receivership has stated Rehabilitation is just an added name, not a reality.

With that said, constitutionally speaking, if the Boards bosses, Secretary of Corrections and the Governor are on the record stating that until conditions change, rehabilitation not possible, how then can the Board assess whether or not Lifer Inmates are rehabilitated?

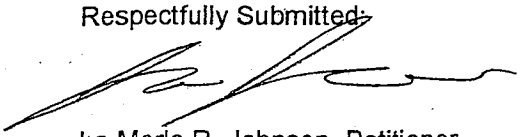
And if under these conditions they can assess whether or not Lifers are rehabilitated, wouldn't such rehabilitation be indicative of the Lifer's efforts, not the prisons?; and that goes to support Petitioner's contentions that he has taken the steps to rehabilitate himself.

At this time, the Board can not fulfill its statutory duties in light of the Governor and Secretary of Corrections being on the record stating that under current conditions, rehabilitation, (which is only required for Lifers), is not possible; and as such, Court intervention is constitutionally necessary in order to assure Lifers Rights to Fair-Hearings.

CLOSING

The **cumulative** effect of all of the beforementioned issues, and the meritable individual issues in and by themself, warrent Court-Intervention and an issuance of an 'Order To Show Cause' because a Prima Facie case has been shown. In accordance with law, if Order To Show Cause issues, appointment of Counsel is requested.

Respectfully Submitted,



La Merle R. Johnson, Petitioner

Date: November 16, 2006

La Merle R. Johnson, J-92682
P.O. 409060 (C15-208L)
Ione, CA 95640-9060

November 16, 2006

Dear Clerk & Justices:

First I would like to apologize for the length of the enclosed documents, unfortunately all of them were needed in order to substantiate the raised points.

Enclosed writ deals with Lifer-Parole issues, and raises present-day (***Unique***) questions that Petitioner believes have never been raised. One of which; Governor Schwarzenegger & Secretary of Corrections James Tilton are on record stating that under present prison conditions, (overcrowding, etc.), rehabilitation is not possible. Realistically speaking the Board of Parole Hearings (previously Board of Prison Terms 'BPT') job is to assess whether or not Lifer-inmates are rehabilitated. So if what the Governor & Secretary are stating is true, and their the overseer's of the Board, how is that the Board is carrying out its duties if their Boss' do not believe it (Rehabilitation) is possible under present conditions? Amongst other raised constitutionally-interesting claims, is one dealing with the body of law indicative that remorse is necessary for parole, which conflicts with the Penal Code because it states that the prisoner need not admit to the crime and or discuss it at the parole-hearing. (And the only way to realistically gage remorse, is if and when the prisoner admits to the crime.)

A SASE included with a copy of the face-page of the writ, please stamp filed and return. Due to bulk, documents sent in two separate envelopes; #1 envelope contains Original (Writ) and bound documents, #2 contains 4-copies of writ. Please excuse any inconvenience.

Sincerely,

La Merle R. Johnson